SARAWAK BUILDING SUPPLIES SDN. BHD.

v.

THE DIRECTOR OF FORESTS & ORS.

HIGH COURT BORNEO, KUCHING
HAIDAR MOHD. NOOR J
[SUIT NO. KG. 40 OF 1990]
2 OCTOBER 1990

COMPANY LAW: *Reconstitution of shares - Joint venture agreement - Licence of company revoked as authority's approval not obtained - Managing director commenced proceedings in company's name - Whether had authority to do so - Whether resolution and meeting were valid - No quorum - No delegation - No sanction of majority shareholders - Whether "disinterested" party - Articles of association.*

The plaintiff company SBS was the holder of a forest timber licence issued by the 1st defendant D1 with the approval of the 2nd defendant D2. This licence was valid for 10 years from the date of issue (28 December 1979). On 11 March 1987, D1, on D2's direction, revoked the licence before the expiry of the 10 years and without giving any reasons. SBS then commenced these proceedings.

The defendants filed a summons-in-chambers for an order under O. 12 r. 7(1) of the Rules of the High Court 1980 (RHC) for dismissal of SBS's suit on the basis that SBS's advocates, LLK, were not properly authorised to act on behalf of SBS and that neither SBS's board of directors nor its shareholders had authorised the commencement of this action. The issues raised were that of actual or ostensible authority and authority to act by estoppel.

When the licence was initially obtained, SBS was under the control of its two directors, the Huangs (H1 and H2). On May 1980, the Huangs entered into a joint venture agreement with the Tiongs in what was purportedly a reconstitution of shares of SBS between Tiongs and their nominees and Huangs and their nominees. The articles of association were amended to this effect.

However this reconstitution exercise did not obtain the approval of the licensing Authority; The Forest Department refused to recognise the joint venture agreement and said that it only recognised one of the Huangs, H1, as managing director of SBS.

The Huangs then acting on their own behalf and on SBS' behalf sought orders for the reconveyance shares from Tiongs and their nominees to the original shareholders; the Huangs also filed other proceedings, as plaintiffs, seeking leave to name the third plaintiffs SBS as the fifth defendant; The leave was granted on the basis that there was a clear lack of authority to bring the action in SBS's name as the Huangs were not in control of the company.

The defendant's advocate questioned the authority of LKK to act on behalf of SBS together with the supporting resolutions of SBS's board of directors made on 20 February 1990 by H1 arguing that to date no meeting has been called to see if majority of the shareholders support this action.

The issue is whether the meeting of the board of directors held on 20 February 1990 was properly constituted and whether the resolution passed was a valid one.

Held:

[1] On a reading of Article 86 of the articles of association there was no quorum and as such the resolution passed is invalid; neither was there evidence that the power to institute legal proceedings in SBS's name was delegated to H1.

[2] (a) The absence of the Tiongs at the meeting, although they were notified, does not give the Huangs the licence to proceed with the meeting, as a quorum was necessary under Article 82(a); The Huangs should have called an extraordinary general meeting for sanctioning of the institution of proceedings in SBB's name.

(b) On the facts, there is no conflict of interests by the Tiongs as they are not the new licensees; In any event Article 82(a)(4) is a saving provision which applies if Article 82 does not.

[3] H1 was not a disinterested party in the passing of the resolution; hence such a resolution is invalid as there was no "disinterested" quorum for the meeting.

[4] On the issue of implied authority and agents of necessity, H1 had conceded that the majority of the shareholders were against the institution of the action. As such, he cannot successfully claim that he was an agent of these who command the majority votes. (*contra Avel's* case). As a minority shareholder, H1 should have proceeded by way of derivative action.

[Plaintiffs' action struck out.]

Cases referred to:

Airways Ltd. v. Bowen [1985] BCLC 355
Danish Mercantile Co. Ltd. and Ors. v. Beaumont and Anor. [1951] 1 All ER 930
Syawal Enterprise Sdn. Bhd. & Anor. v. Dayadiri Sdn. Bhd. [1990] 3 CLJ (Rep) 165
United Investment and Finance Ltd. v. Tee Chin Yong & Ors. [1967] 1 MLJ
Burland v. Earle [1902] AC 83
Avel Consultants Sdn. Bhd. v. Mohd. Zain Yusof & Ors. [1984] 1 CLJ (Rep) 482
Marshall Valve Gear Co. Ltd. v. Manaing Wandle & Co. [1909] 1 Ch 26

Legislation referred to:

Forest Ordinance (Cap 126) (Sarawak), s. 2(2)(d)
Rules of the High Court 1980, O. 12 r. 7(1)
Government Proceedings Ordinance 1956, s. 24(3)

Other source referred to:

Gower's Principles of Company law, 4th Edn., pp. 647 & 651

For the plaintiffs/respondents - G. Sri Ram (Colin Law & L.L. Kee with him); M/s. L.L. Kee & Co. Kuching
For the defendants/applicants - J.C. Fong (Lim Heng Choo with him), Legal Officer with Forestry Department; M/s. Reddi & Co. Kuching

JUDGMENT

Haidar Mohd. Noor J:

The plaintiff, Sarawak Building Supplies Sdn. Bhd. ("SBS") is a company limited by shares incorporated and registered in Malaysia pursuant to the Companies Act 1965 and having its registered office at no. 57, 2nd Floor, Mission Road, Sibu, Sarawak. SBS was the holder of Forest Timber Licence No. T/3019 ("the said licence") covering an area of 64,757 acres of timber land in the Takan Pelagus area, Sarawak issued by the Director of Forest, Sarawak

(first defendant) with the approval of the Minister of Forestry (now the Minister of Resource Planning)(second defendant) pursuant to the provisions of the Forest Ordinance (Cap. 126) on 28 December 1979. The said licence was valid for a period of ten years commencing from the date of issue. The third defendant is the Government of the State of Sarawak. By a letter dated 11 March 1987 the first defendant on the direction of the second defendant, gave notice to SBS revoking the said licence without assigning any reason and before the expiry of the period of the said licence. Hence, the filing of this writ by SBS against the defendants seeking a number of claims.

The defendants entered conditional appearance through their advocate, Mr. J. C. Fong, who was duly authorised to act on their behalf vide authorisation under s. 24(3) of the Government Proceedings Ordinance 1956, as extended to Sarawak by the Modifications of Laws (Government Proceedings and Public Authorities Protection) (Extension and Modification) Order 1956 (L.N. 67 of 1965) issued by the acting State Attorney-General (encl. 8). Subsequently, the defendants filed a summons-in-chambers dated 17 April 1990 under O. 12 r. 7(1) of the Rules of the High Court 1980 ("RHC") for an order that:

(a) this action filed in the name of the plaintiff - company, Sarawak Building Supplies Sdn. Bhd., be struck out or dismissed or stayed;

(b) the advocates on record Messrs. L.L. Kee & Co. were never or not properly authorized to act on behalf of the plaintiff - company; and

(c) the costs of and incidental to this action and to this application be paid by the advocates on record, Messrs. L.L. Kee & Co. to the defendants.

At the hearing of the summons in chambers (encl. 11) the defendants elected to rely only on the following grounds:

(i) no authority has been given by the board of directors of the plaintiff company and/or the majority of its shareholders for this action to be commenced in the name of the plaintiff company;

(ii) this action was improperly instituted in the name of the plaintiff company;

(iii) Messrs. L.L. Kee & Co. were never authorised to act for the plaintiff company;

(iv) it is improper to maintain this action in the name of the plaintiff company.

The paramount issue therefore is whether this action has been properly brought or should be maintained or continued in the name of SBS. Mr. J.C. Fong concedes that the summons succeeds or fails depending on the determination of this issue by the Court.

Facts

Initially SBS was under the control of Huang Ee Hoe and Huang Shoou Shinu (the Huangs) as its directors, when the said licence was given to SBS on 28 December 1979 by the first defendant. Subsequently on 20 May 1980 both of them entered into a joint venture agreement (Exhibit "HEH4") with Tiong Ik Kiong and Tiong Thai King ("the Tiong's) inviting Tiong Ik King and Tiong Thai King or their nominees to take up 255,000 shares and such shares are described as "A" ordinary shares and 245,000 shares are to be taken up by Huang Ee Hoe and Huang Shoou Shinu or their nominees and such shares are described as "B" ordinary shares in SBS. The necessary amendments will be made to the articles of association of SBS on the due execution of HEH-4 to allow holders of "A" ordinary shareholders the power to appoint not more than seven directors and likewise for holders of "B" ordinary shareholders

to appoint not more than six directors in SBS. Both the holders of "A" and "B" ordinary shareholders shall have the power to appoint a joint-managing director each and subsequently Huang Ee Hoe was appointed joint-managing director by the "B" ordinary shareholders and Tiong Thai King was appointed the other joint-managing director by the "A" ordinary shareholders pursuant to HEH-4. The powers and responsibilities of the joint-managing directors are spelt out under clauses 4 and 5 of the HEH-4. Apparently Tiong Ik King and Tiong Thai King were invited to join SBS for their "extensive experience and expertise in hill forest logging operations and timber marketing and they also have the ability to provide or procure the technical and financial resources necessary or required for the efficient exploitation of the timber resources in the licensed area (see Clause (f) in the recital to HEH4). The 255,000 "A" ordinary shares pursuant to Clause 1(a) thereof were registered in the following names:

(i) Ayu bin Amit	42,500 shares
(ii) Mahathir Bin	42,500 shares
(iii) Abolkassim Bin	42,500 shares
(iv) Tiong Hiaw King	77,500 shares
(v) Tiong Thai King	50,500 shares
	255,000 shares

It would appear from the letter of the Director of Forests (Exhibit "HEH-8") that the reconstituted shareholding of SBS, the holder of the said licence, did not get the prior approval of the licensing authority thereby contravening s. 2(2)(d) of the Forest Ordinance Cap. 126 as Clause 31 of the said licence declares the said licence to be nontransferable. In the circumstances the Forest Department said that it could not accept HEH-4 as valid or perhaps it is better, in my view, to say that it could not recognise such an agreement. Hence it was on this basis that the Forest Department asserted that it could only recognise Huang Ee Hoe as the managing director of SBS before it was reconstituted.

As a result of the views held by the Forest Department, Huang Ee Hoe and Huang Shoou Shinu (the original directors of SBS) filed suit No. 60 of 1984 in Sibu High Court seeking, *inter alia*, for an order that the "A" ordinary shareholders re-convey their shares to the original shareholders of SBS and that, the joint-managing director and director nominated by the "A" ordinary shareholders resign and relinquish their posts forthwith. According to para. 22 of the amended statement of claim in suit No. 60 of 1984 Huang Ee Hoe and Huang Shoou Shinu acting on their own behalf and on behalf of SBS through their solicitors, on 25 April 1984, purportedly rescinded and terminated HEH-4.

Huang Ee Hoe and Huang Shoou Shinu, as plaintiffs, suing for and on behalf of themselves and all the other shareholders of "B" ordinary shares in SBS yet filed another suit No. 54 of 1984 in the Sibu High Court against Tiong Thai King and Tiong Hiew King, Rimbunan Hijau Sendirian Berhad and Tiong Toh Siong & Sons Sendirian Berhad. Some of the declarations sought in suit No. 54 of 1984 would appear to overlap some claims sought in suit No. 60 of 1984. In suit No. 54 of 1984 Huang Ee Hoe and Huang Shoou Shinu as first and second plaintiff respectively filed a summons in chambers seeking *inter alia*, leave to name the third plaintiffs (SBS) as the fifth defendant. The learned Judge in suit No. 54 of 1984 granted leave to name SBS as the fifth defendant and struck out SBS as the third plaintiff as it was said by the learned Judge that on the evidence adduced there is a clear lack of authority to bring the action in SBS's name citing *Airways Ltd. v. Bowen* [1985] BCLC 355. Further the learned Judge went on to say at p. 2

> ... the case of the 1st and the 2nd plaintiffs is that they are bringing this suit as a "derivative" action, that not being in control of the company, they are unable to continue making the company a plaintiff ...

It now remains for me to determine the sole issue raised by the defendants, that is, whether the writ is bad for want of authority.

It is a clearly established principle that in an action to redress a wrong done to a company or to recover money or damages alleged to be due to it the proper plaintiff should be the company. The action should be commenced by the company in its corporate name. In respect of the control of company's litigation, *Halbury's Laws of England* Vol. 7(1) at p. 737, para. 1011 stated:

> As regards litigation by an incorporated company, as a rule the directions are the persons who have authority to act for the company, but in the absence of any contract to the contrary in the articles of association, the majority of the members are entitled to decide, even to the extent of overruling the directors, whether an action in the company's name should be begun or allowed to proceed, The secretary of a company cannot institute proceedings in its name in the absence of express authority to do so; but proceedings begun without authority may subsequently be ratified.

However, in case of urgency, the company's name may be used as plaintiff subject to the intending plaintiffs (as the Huangs here) being able to show that they have the support of the majority (see *Danish Mercantile Co. Ltd. & Ors. v. Beaumont & Anor.* [1951] 1 All ER at p. 930). It is not disputed that earlier on the defendant's advocate questioned the authority of M/s L.L. Kee & Co. to act on behalf of SBS, together with the supporting resolution of SBS's board of directors (see Exhibit "B" in encl. 11) and to-date no meeting has been called to see if the majority of the shareholders support this action and this evidence remains uncontroverted. The lack of authority of the solicitors to act can be challenged at any stage of the proceedings. Once the challenge has been made, the burden of proving that the suit had been instituted with proper authority rests on the plaintiff company (see *Syawal Enterprise Sdn. Bhd. & Anor. v. Dayadiri Sdn. Bhd.* [1990] 3 CLJ (Rep) 165). For the plaintiff, the sources of authority relied on are:

(a) Actual authority

(b) Ostensible authority

(c) Authority to act by estoppel

(a) Actual Authority

The actual authority relied on was purportedly pursuant to a resolution of the board of directors meeting allegedly held on 20 February 1990 when Huang Ee Hoe in his affidavit (encl. 17) at para. 8 deposed:

> I further state that pursuant to the Board of Directors' resolution to institute this action as aforesaid, I directed Messrs. L.L. Kee & Co. to commence proceedings against the abovenamed defendants.

It is to be observed that nowhere in his various affidavits did Huang Ee Hoe depose that he is relying on implied or ostensible authority. The issue of actual authority is centred on the purported board of directors meeting allegedly held on 20 February 1990 and the resolution passed thereon. In view of the facts presently before the Court, was it a properly constituted meeting held on 20 February 1990 and if not, the resolution passed cannot be a valid resolution and hence anything purportedly done in pursuance thereof cannot be valid.

It is then pertinent for me to examine the articles of association of SBS (see P1 in encl. 41) in respect of the proceedings of directors and Article 86 in respect of quorum is relevant and reads:

> 86. The Directors may meet together for the despatch business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. **Unless otherwise determined, two shall be a quorum. Provided always that one of the Directors present is an "A" Director and the other a "B" Director respectively appointed pursuant to Article 70.** Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairman shall have a second or casting vote. (Emphasis provided)

It is not disputed that there was no "A" director present at the alleged board meeting and there has been no resolution passed to reduce or change the quorum as prescribed by Article 86 and in that event clearly there was no quorum and the resolution purportedly passed on that day is, to my mind, invalid (see *United Investment and Finance Ltd. v. Tee Chin Yong & Ors.* [1967] 1 MLJ at p. 35). Neither was there evidence that the power to institute legal proceedings is SBS's name delegated to Huang Ee Hoe. In *Gore-Browne on Companies*, 43rd Edn. at para. 26-3, it is stated:

> Each director has not alone power to bind the company unless he has had this power specially delegated to him. Nor can a number of the directors, even although they constitute a majority, act without meeting or at a meeting of which notice has not been given to the whole body, and acts done by the majority of the board not duly convened as a board meeting (e.g. on the occasion of a general meeting of the company) are not valid.

The plaintiff's answer, it seems, is that the Court has no jurisdiction or to put it another way, will decline jurisdiction to inquire into the domestic affairs of a corporation and relied on the case of *Burland v. Earle* [1902] AC 83. With respect, a closer examination of *Burland v. Earle supra*, would tend to show the contrary, where it is stated under the headnote:

> It is an elementary principle that a Court has no jurisdiction to interfere with the internal management of companies acting within **their powers**. (Emphasis added)

In this case if the Court is satisfied that SBS has not acted within its powers as for example Article 86, the Court can and should, in my view, exercise jurisdiction. In this case it is abundantly clear that there has been contravention of Article 86 of SBS and there is no two way about it.

Next, Mr. Sri Ram, acting for the plaintiff company, submitted on the issue of conflict of interests by the Tiongs and their absence makes no difference and went on further to submit that the Tiongs have not intervened in these proceedings or to stop it. He went on yet further to say that this issue of properly constituted meeting of the board of directors was taken by a stranger, that is, the defendants. Before proceeding to consider the conflict of interest issue. I would say that whether the Tiongs should or should not intervene in these proceedings. To stay or to stop it is a matter for the Tiongs to decide and for the present moment, I think it is an irrelevant issue in these proceedings. To further allege, as I understand it, that a stranger took this point meaning perhaps that the defendants could not take up this point would, with due respect, be erroneous as it is open to the defendants as provided under O. 12 r. 7(1) of RHC to question the authority of SBS to institute the present proceedings even though the defendants may be described as "a stranger". In fact the issue of whether the action will lie at all should, if possible, be decided as a preliminary issue, and not left for determination at the trial. (see *Halbury's Laws of England* 4th Edn., para. 1012 at p. 738).

On the conflict of interest issue, Article 82(a) of SBS is relevant for consideration. Article 82(a) reads:

> A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest in accordance with the provisions of the Act. Save as by the next following Article otherwise provided, a director shall not vote in respect of any contract or arrangement in which he is interested (and if he shall do so his vote shall not be counted), nor shall he be counted for the purpose of any resolution regarding the same, in the quorum present at the meeting, **but this Article shall not apply to**:
>
> (iv) any contract or arrangement with any other company in which he is interested only as a director or other officer or creditor of, or as a shareholder in or beneficially interested in the shares of that company. (Emphasis added)

Article 82(a) therefore determines when a director shall not vote on any contract or arrangement with the company. Firstly, it would appear that the Tiongs were notified of the purported board meeting but for reasons best known to themselves, they elected not to attend the meeting but in my view it does not mean that their absence give the Huangs the licence to proceed with the meeting and passed the purported resolution to institute these proceedings in SBS's name, as clearly their presence is necessary to constitute a proper quorum for the meeting, though perhaps if it is shown that they have interests in any contract or arrangement with the company i.e. SBS, they shall not vote, and if they do so their votes shall not be counted nor shall it be counted for the purpose of any resolution regarding the same in the quorum present at the meeting. In my view, if the Huangs cannot proceed with the board meeting for lack of quorum, then in order to overcome this hurdle an extra ordinary general meeting of SBS should be held to get the necessary sanction to institute these proceedings in the name of SBS. This the Huangs did not do perhaps for reasons that they are in the minority and may not be able to carry through such resolution.

Whatever it may be, can it be said that the Tiongs have personal interests in the said licence. The Tiongs have interests in Tiong Toh Siong & Sons. Sdn. Bhd. ("TTS") as contractor for SBS in the said licence and the subsequent documents filed show that TTS is the contractor for Sarawak Timber Industry Development Corporation ("STIDC"), the new licence of the area earlier given to SBS (see "HEH12", "HEH13"). In whatever direction the decision goes in respect of the issue on the licence in respect of the timber area in question, TTS presumably could still be the contractor. In my view, however, I cannot see, on the given facts, of the conflict of interests issue raised by the Huangs as the Tiongs are not the new licence and in any event Article 82(a)(iv) is a saving provision in favour of the Tiongs where Article 82(a) does not apply to them for:

> any contract or arrangement with any other company in which he is interested only as a Director or other officer or creditor of or as a shareholder in or beneficially interested in the shares of that company (Emphasis added).

Even assuming that there was a conflict of interest at all, it would equally apply to the Huangs as Exhibit "HEH-10" and appendix 11 thereto would seem to indicate. In fact in appendix 11 Huang Ee Hoe was trying to strike a bargain with the first defendant by proposing that a new forest timber licence covering part of the licensed area be given to his new company (see para. (1)) and it clearly indicates that he was not acting in the interests of SBS as he purportedly claimed to do so. As the defendants refused to entertain his proposals he carried out his threats by filing these present proceedings. As a result Huang Ee Hoe was not a

disinterested party in the passing of the purported resolution at the purported board meeting to commence this action. Hence such a resolution, in any event, is therefore invalid as there was no "disinterested" quorum for the meeting (see *In re North Eastern Insurance Co. Ltd.* [1919] Ch D 198).

(b) Implied Authority

In respect of the submission on the implied authority, it is clear from the various affidavits filed that Huang Ee Hoe did not purport to rely on such implied authority. The roles of the joint managing directors of SBS are clearly spelt out in "HEH4" at Clauses 4 and 5 and clearly the power to institute legal proceedings in the name or on behalf of SBS was never delegated to any of the joint managing director. If I may say so, according to Clause 11 of HEH4 it is the duty of the first party (*i.e.* the Huangs) to arrange for a meeting with the Chief Minister together with the Tiongs (the second party) within thirty days of the date of execution of HEH-4 for the approval of the reconstituted shareholding of SBS by the Chief Minister and the failure to obtain such approval would render HEL as cancelled, null and void. There is no evidence that such action has been taken by Huangs and this could very well be the reason for the cancellation of the said licence (see Exhibit HEH-8). Be that as it may, Huang Ee Hoe's Counsel relied on the case of *Avel Consultants Sdn. Bhd. v. Mohd. Sain Yusof & Ors.* [1984] 1 CLJ (Rep) 482 which held that a managing director of a company has implied authority to commence legal proceedings in the name of the company. In my view, in *Avel's* case, V.C. George J relied more on the doctrine of agency of necessity rather than implied authority as such when his Lordship said at p. 487:

> The position is that in respect of a managing director of a company apart from an implied term in his contractual relationship with the company the doctrine of agency of necessity would impose a duty on him to act on behalf of the company, and if necessary in the name of the company, to preserve the property of the company.
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> Similarly, in the absence of contractual terms to the contrary it is the majority vote of the company in general that has the ultimate say in matters pertaining to the business of the company and those in command of the majority vote may function as agents of necessity to preserve the property of the company **but "at their peril and subject to their being able to show that they have the support of the majority"** *Buckley on the Companies Act* 12th Edn., 169. (Emphasis added).

In *Avel's* case, the managing director, and another shareholder, Abdul Halim bin Mat, held majority shares in the company and there was therefore no difficulty in applying the doctrine of agency of necessity to confer upon the managing director the implied authority to institute legal action as agent of those in the command of the majority votes. The learned Judge went on further to say that there was no necessity to hold a general meeting when his Lordship said:

> And since the outcome of any motion at such a meeting (*i.e.* general meeting of the company) to cause the issue of a writ to issue was obvious and a foregone conclusion in that Johari and Adbul Halim owned or controlled more than 50% of the shares, holding such a meeting was not necessary.

Further in the case of *Marshall Valve Gear Co. Ltd. v. Manaing Wandle & Co.* [1909] 1 Ch. 26 referred to by V.C. George J clearly shows the application of the majority rule principle "where the Court refused to strike out a writ which had been caused to be issued without a Board or general meeting decision, as the managing director controlled the majority of the shares in the company".

In other words, the "agents of necessity" would still have to be able to show that they have the support of the majority. In this case we have the converse situation as obviously Huang Ee Hoe conceded that the majority of the shareholders were against this action and he cannot therefore successfully claim that he was an agent of those who command the majority votes. We have also the situation here of joint-managing directors in SBS as opposed to one managing director in *Avel's* case and the powers of the joint managing directors are clearly spelt out in HEH4. As Huang Ee Hoe as joint managing director relied on purported express authority which I rule is not valid as the resolution was not validly passed I do not see how he could rely on implied authority now. Even assuming that he could rely on implied authority, the doctrine of agency of necessity does not apply to him as he lacked the support of the majority shareholders. To this extent, Huang Ee Hoe himself would appear to concede in Sibu High Court suit No. 54 of 1984 when on his own volition he acknowledged that the majority was against the use of SBS's name as third plaintiff and made an application to name SBS as the fifth defendant. There is no evidence of change of such a position except that in this action he seemed to take a different stand purely perhaps to carry out his threats of Court action against the defendants hoping to cow the defendants to settle these proceedings for his own personal benefits and not so much for the benefits of SBS.

That the majority shareholders would not commence legal action is not disputed here and that by itself is no excuse for Huang Ee Hoe to use SBS to institute this action. At most Huang Ee Hoe, as a minority shareholder, should have proceeded by way of a derivative action if he so wishes (see *Gower's Principles of Company Law*, 4th Edn., at pp. 647 and 651).

(c) Authority to act by Estoppel

This ground can be easily disposed of as the allegation that the defendants are estopped from denying Huang Ee Hoe had authority as managing director on behalf of SBS in the present litigation must be read in the context of the nonrecognition by the defendants of the reconstituted shareholding of SBS to which the first defendant clearly said there was no prior approval of the licensing authority and this contravened s. 2(2)(d) of the Forest Ordinance Cap. 126 as Clause 31 of the said licence declares the said licence to be nontransferable. Until HEH-4 is declared by the Court to be invalid, the Tiongs have and continue to have rights and say in the management of SBS and the articles of association of SBS must be adhered to by the directors/shareholders of SBS for these proceedings to be in SBS's name. I do not see how Huang Ee Hoe can rely on this issue when it is not an issue at all. With respect, this issue is raised in order to cloud the real issues!

In the circumstances I am satisfied that this action was commenced without proper authority in the name of SBS and I would accordingly strike it out. As Huang Ee Hoe had wrongly initiated this action in SBS's name by issuing the warrant purportedly under the so-called resolution of the board to L.L. Kee & Co. to file this writ, I think, it is only appropriate that I order that he personally bears the costs of this action and the application and I do so order.

Also found at [1991] 1 CLJ 373